IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 374 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KISHORSINGH @KISHOR LANGADO LALSINGH RAJPUT

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 374 of 2003

MR NM KAPADIA for Petitioner No. 1

MS HARSHA DEVANI AGP for Respondent No. 1-3

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 22/05/2003

ORAL JUDGEMENT

#. Leave to amend, as prayed for is granted.

#. This petition is filed by the wife of the detenu

challenging the order of detention passed against her husband Shri Kishorsingh @ Kishor Langado Lalsingh dated 18.11.2002 passed by the Police Commissioner, Ahmedabad City on several grounds. While filing this petition, the petitioner has annexed the order of detention dated 18.11.2002 and the committal order, detaining the detenu at Porbandar District Jail and the grounds of detention with other material relied upon by the Detaining Authority at the time of passing order of detention by the Detaining Authority and the representation of the advocate to the Detaining Authority dated 16.11.2002.

#. During hearing, Mr. Kapadia, learned advocate for the petitioner has taken me through the grounds of detention and the relevant documents attached to the petition. As found from the grounds of detention dated 18.11.2002, the Detaining Authority has after considering the material placed before him, recorded satisfaction that the detenu is indulged in prejudicial activities to the maintenance of public order and he was of the view that it was necessary for him to detain the petitioner under PASA Act with a view to prevent him from doing prejudicial activities in such manner. The Detaining Authority had after considering the material, recorded satisfaction that the detenu is a "bootlegger" within the meaning of Section 2 (b) of the PASA Act. As found from the grounds of detention, two prohibition cases were registered against the detenu under the Prohibition Act. Both the cases were registered at different Police Stations, one case is registered at Prohibition station dated 13.11.2002 and another case is registered at shahibaug Police Station dated 13.11.2002. In both the cases, the offences were registered under Sections 66 (b), 65 (a) (e), 116 (1) (b) of the Prohibition Act. In the first case being CR. No. 3647 of 2002 registered at Prohibition Station, the accused was not arrested and in that case, the Investigating Agency has seized 359 bottles of liquor worth Rs.1,01,700=00 and one loading rickshaw worth Rs.60,000=00. The said case was under investigation. In the second case being CR. No. 5267 of 2002, registered at Shahibaug Police Station, the police has seized 3168 bottles of liquor worth Rs.1,76,000=00 and in that case, the accused was arrested by the police on 16.11.2002. The Detaining Authority had also considered the material in the form of statements recorded by the police namely P.I. PCB on 15.11.2002, which were verified by the Detaining Authority on 17.11.2002. As found from the statements of witnesses, the witnesses have stated in respect of the prejudicial activities at the hands of the petitioner detenu and its associates, where the public order was disturbed. The

Detaining Authority has accordingly, after considering that material, recorded satisfaction that the detenu is a 'bootlegger' and because of his prejudicial activities, he was to be detained with a view to prevent him from such prejudicial activities, the order of detention dated 18.11.2002 served on the detenu, when the detenu / accused was on police remand in respect of his arrest in CR. No. 5267 of 2002 dated 13.11.2002 with Shahibaug Police Station. After arrest of the petitioner on 16.11.2002, the petitioner accused was produced before the learned Magistrate on 17.11.2002 and the remand was granted by the learned Magistrate upto 21.11.2002. It is the case of the petitioner that when he was in police remand, which was granted by the Competent Court upto 21.11.2002, the order of detention was effected on 18.11.2002. In the petition, though several grounds were raised, Mr. Kapadia, learned advocate for the petitioner has placed in service only one contention that the order of detention is vitiated as per the ground no. 8. It is contended that the petitioner was on police remand in connection with CR. No. 5267 of 2002. He was not at all arrested in connection with Prohibition CR. No. 3647 of 2002 though he was in police custody of Shahibaug Police Station since 16.11.2002. Thus, there was no cogent material on the basis of which detaining authority could have concluded that the petitioner would be released on bail in connection with both the cases and that he would continue his illegal activities, therefore, there was no need to pass the order of detention. Mr. Kapadia has also placed on my hand the decision of this court rendered in Special Civil Application No. 25 of 2003 by me on 21.5.2003, wherein, on the similar grounds raised in the petition, the order of detention of the detenu was held illegal and the same is quashed and set aside. In the said case, the detenu was involved in only one prohibition case, which was registered at Shahibaug Police Station, while in the present case, the detenu was involved in two cases registered at Prohibition Station and Shahibaug Police Station dated 13.11.2002.

#. Ms. Devani, learned AGP has vehemently urged and supported the order of detention. She has also taken me through the affidavit filed by the Detaining Authority and according to her that the subjective satisfaction arrived at by the Detaining Authority shows that the detenu was acting prejudicial activities to the maintenance of public order. In para 10 of the affidavit-in-reply, it was contended that the detenu was absconding after the commission of both the offences and he was arrested on 16.11.2002 in connection with CR. No. 5267 of 2002 registered at Shahibaug Police Station and

thereafter, he was produced before the learned Magistrate on 17.11.2002 and the police remand was granted upto 21.11.2002 and during the police remand, on 18.11.2002 the order of detention came to be passed. So far as offence at Sr. No. 1 is concerned, thereafter at that relevant point of time, he was not shown as arrested person but the fact remains that he was involved in the offence registered as Nashabandhi Uttar Division bearing C.R. No. 3647 of 2002.

#. On considering the submissions made before me and on going through the petition and the reply affidavit filed by the Detaining Authority, I am of the view that the contentions raised in this petition is equally applicable to the fact of the case of co-accused, wherein, this court has while considering the detention order passed by the Detaining Authority against him i.e. Balvantsinh Devji Dabhi, while deciding Special Civil Application No. 25 of 2003 decided on 21st May, 2003, set aside the order of detention of that accused. In the present case, admittedly, the Detaining Authority had in term, while considering the material, recorded satisfaction that the petitioner is a 'bootlegger' and he is indulging prejudicial activities. In the grounds of detention, the Prohibition case referred to at Serial No. 1 registered at Prohibition Station under CR. No. 3647 of 2002 on 13.11.2002 and the accused namely the present petitioner is shown to be absconding and the case registered at Serial No. 2 at Prohibition Station, Shahibaug Police Station under CR. No. 5267 of 2002 dated 13.11.2002, the petitioner accused was arrested by the police on 16.11.2002 and the Detaining Authority has in term observed that in the said case, he is under police remand and after the completion of the police remand and after his arrest in the case registered at Prohibition Station, the detenu accused was applied for bail in both the cases and released on bail after furnishing security and detenu may indulge in such prohibition activities and with a view to prevent such prejudicial activities, the order of detention was necessary to pass against him. As observed earlier that once, the accused was arrested by the police on 16.11.2002, it is not correct to say that accused was absconding in another case which was registered at Prohibition Station i.e. Prohibition CR. No. 3647 of 2002.

#. As discussed hereinabove and in light of the decision of the co-accused, the petition is allowed. The impugned order dated 18.11.2002 passed by the Commissioner of Police, Ahmedabad City is quashed and set aside. The detenu Shri Kishorsingh @ Kishor Langado Lalsingh Rathod,

is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly. Direct Service Permitted.

(D.K. Trivedi, J.)
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